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12 IN THE UNITED STATES DISTRICT COURT
13
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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16 UNITED STATES OF AMERICA,) No. CR-07-00721 EDL
17 Plaintiff,) DEFENDANT'S MEMORANDUM OF
18 v.) POINTS & AUTHORITIES IN SUPPORT
19 ANDREW MAKER,) OF MOTION FOR ACQUITTAL UNDER
20 Defendant.) FEDERAL RULE OF CRIMINAL
21) PROCEDURE 29(a); PROPOSED
22) FINDINGS OF FACT & CONCLUSIONS
23) OF LAW
24)
25)
26)

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18 “There is nothing more crucial, yet so strikingly obvious, as the need to prove the
19 jurisdictional element of a crime.” *United States v. Leslie*, 103 F.3d 1093, 1103 (2d Cir. 1997).
20 Obvious obligations are occasionally overlooked. In its prosecution of Mr. Andrew Maker, the
21 government has failed to prove beyond a reasonable doubt that any incident described at trial
22 took place within the special maritime and territorial jurisdiction of the United States. It is on
23 this basis that Mr. Maker hereby moves this court for judgment of acquittal under Federal Rule of
24 Criminal Procedure 29(a).

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1 PROCEDURAL HISTORY

2 On November 15, 2007, Mr. Andrew Maker was charged with committing simple assault
3 within the special maritime and territorial jurisdiction of the United States, in violation of 18
4 U.S.C. § 113(a)(5). A bench trial was held before this court on June 18, 2008. Mr. Maker
5 moved for entry of judgment of acquittal at the close of the government's case-in-chief against
6 him. The motion was denied, and Mr. Maker renewed his motion after the close of all evidence.

7 STATEMENT OF FACTS

8 The government alleges that on or about September 30, 2007, Mr. Maker spat in the face
9 of security guard Connie Sue Redman after being denied entrance through the disabled gate of
10 the San Francisco Blues Festival. Officer Neil Wu of the United States Park Police conducted an
11 arrest of Mr. Maker on the same date.

12 At trial, Ms. Redman testified on direct examination that on September 30, 2007 she was
13 working as a private security guard at Fort Mason. *See* Reporter's Transcript at 3:15-20. Ms.
14 Redman later explained that the disabled gate at which she was positioned was temporary,
15 established only during the Blues Festival. *Id.* at 9:5-9. Ms. Redman's testimony was not
16 supported by any map, photograph or other evidence demonstrating that this temporary gate was
17 located within the jurisdictional boundaries of Fort Mason or the Golden Gate National
18 Recreational Area.

19 Officer Wu testified on direct examination that on September 30, 2007 he was working at
20 the Blues Festival in Upper Fort Mason, in the Golden Gate National Recreational Area. *Id.* at
21 23:4-7. During cross examination, Officer Wu admitted that he did not observe any incident
22 between Mr. Maker and Ms. Redman. Officer Wu further testified that he had not taken any
23 photographs, made any diagrams, or otherwise inspected the location at which the alleged
24 incident took place. *Id.* at 27:1-3; 26:14-25. At no time during trial did Officer Wu testify that
25 he had personal knowledge of the location of the temporary disabled gate or that such gate was
26 located within the jurisdictional boundaries of Fort Mason or the Golden Gate National

1 Recreational Area.

2 **ARGUMENT**

3 Title 18 § 113(a)(5) requires that the government prove as an essential element that the
 4 offense occurred within the special maritime and territorial jurisdiction of the United States.
 5 Here, the only evidence introduced at trial regarding the location of the alleged incident came
 6 from Ms. Redman, who could offer only a layperson's belief that she was within Fort Mason
 7 when the alleged offense occurred. Such evidence is plainly insufficient to prove the crucial
 8 jurisdictional element of § 113(a)(5) beyond a reasonable doubt.

9 When federal jurisdiction is an essential element of a crime, it is necessary not only to
 10 prove that the charged offense was committed, "but also to establish the situs where committed
 11 and show that such situs was within the jurisdiction of the United States." *Krull v. United States*,
 12 240 F.2d 122, 127 (5th Cir. 1957). While there is no clear requirement as to the type or quantity
 13 of jurisdictional evidence presented at trial, a combination of testimonial and demonstrative
 14 evidence has generally been found sufficient to place the charged incident within federal
 15 jurisdiction. For example, in *United States v. Wilson*, 535 F.2d 521 (9th Cir. 1976), the Ninth
 16 Circuit affirmed a conviction for possession of stolen money orders within the special territorial
 17 jurisdiction of the United States. The Court held that the government had sufficiently established
 18 federal jurisdiction by introducing letters of cession regarding the Navy bases at issue, a map of
 19 the areas which was authenticated by a Navy realty specialist, and testimony from both Navy
 20 employees at exchanges where the defendant had attempted to use money orders and the FBI
 21 agent who had found money orders in the defendant's vehicle. *Id.* at 523.

22 In *Krull*, the Fifth Circuit affirmed rape convictions where the government introduced at
 23 trial both testimony and documentary evidence to establish that the offenses took place in a park
 24 under federal jurisdiction. 240 F.2d at 127. The government called a park officer to testify as to
 25 the possession and control of the area by the United States, introduced a map of the park's
 26 boundaries which was authenticated by the supervising draftsman of the Army Corps of

1 Engineers, introduced an authenticated book about U.S. military reservations featuring a
 2 description of the park and a history of the tracts of which it was comprised, and called a witness
 3 whose testimony located one of the offenses within the park boundaries through reference to the
 4 admitted map. *Id.* at 128, 130. The Court held that the government had properly established
 5 federal jurisdiction, as the government's evidence (1) showed that the United States had
 6 jurisdiction over the park, (2) demonstrated the boundaries of the park, and (3) proved that the
 7 charged offenses were committed within its confines. *Id.* at 127.

8 Similarly, in *Volk v. United States*, 57 F.Supp.2d 888 (N.D. Cal. 1999), the U.S. District
 9 Court held that sufficient evidence of jurisdiction had been presented where the U.S. Park Police
 10 officer who conducted a traffic stop of the defendant within the Presidio established, with
 11 assistance of illustrative diagrams, (1) that he had personal knowledge of the boundaries of the
 12 Presidio, (2) that the area of the traffic stop was located within such boundaries, and (3) that the
 13 Presidio was under federal jurisdiction¹. *Volk*, at 893.

14 In contrast to the cases noted above, the government's case against Mr. Maker made no
 15 attempt to establish the jurisdictional boundaries of Fort Mason or to demonstrate that any
 16 charged conduct took place within such boundaries. Connie Sue Redman's layperson testimony
 17 that she was at Fort Mason cannot establish beyond a reasonable doubt that the temporary
 18 disabled gate at which she was positioned was located within the special maritime and territorial
 19 jurisdiction of the United States. Unlike the witnesses who testified in *Wilson*, *Krull* and *Volk*,
 20 Ms. Redman did not establish the location of the incident she described through reference to an
 21 authenticated map, drawing, photograph, or other demonstrative means of establishing that the
 22 incident took place within the boundaries of federal jurisdiction. *See Wilson*, 535 F.2d at 523;

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24 ¹The court noted that while the question of whether the Presidio is under federal jurisdiction would be an
 25 appropriate subject of judicial notice, “[c]ounsel is certainly correct that the government was required to prove that
 26 defendant committed the offense on federal land. If it had failed to submit evidence regarding the location of the
 offense, it may very well be inappropriate for the Court to take judicial notice of the fact that the offense took place
 on the Presidio, because that would be tantamount to taking judicial notice of an essential element of the crime.” *Id.*,
 at FN 2.

1 *Krull*, 240 F.2d at 128.

2 As an officer of the U.S. Park Police, Officer Wu had the ability to establish whether the
3 alleged incident occurred within federal jurisdiction, but failed to do so both in his testimony and
4 in his underlying investigation. Officer Wu made no attempt in his testimony to demonstrate the
5 boundaries of Fort Mason, establish that the incident described by Ms. Redman took place within
6 such boundaries or otherwise place the alleged incident within the confines of federal
7 jurisdiction. In fact, Officer Wu *could not* have assisted the government in accomplishing this
8 most crucial of obligations because, as he admitted at trial, he had neither witnessed the incident
9 nor personally visited the scene. *See* Reporter's Transcript at 27:1-3; 26:14-25.

10 **CONCLUSION**

11 The incident described at trial took place at a temporary gate, erected only for purposes
12 of the San Francisco Blues Festival. *See id.* at 9:5-9. Given the absence of evidence establishing
13 that this gate was located within the special maritime and territorial jurisdiction of the United
14 States, the government has not proved beyond a reasonable doubt this essential element of the
15 offense with which Mr. Maker is charged. For the foregoing reasons, Mr. Andrew Maker
16 respectfully requests that this Court enter a judgement of acquittal on his behalf.

17 **PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

18 Four witnesses testified in the trial of Mr. Andrew Maker. Only two such witnesses,
19 Connie Sue Redman and Mr. Maker, were actually present during any incident that may have
20 occurred between them. On direct examination, Mr. Maker emphatically denied that he assaulted
21 Ms. Redman. Transcript, at 32:19-23. He was not cross-examined, and thus is contradicted only
22 by the testimony of Ms. Redman. In light of the conflicting evidence presented at trial and the
23 arguments set forth above in support of his motion for acquittal, Mr. Maker asserts that the
24 government has not proved beyond a reasonable doubt the allegations set forth against him.
25 Accordingly, Mr. Maker submits the following proposed findings of fact and conclusions of law.

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1 **A. Findings of Fact**

2 1. The government has not proved beyond a reasonable doubt that any incident between
3 Mr. Maker and Ms. Redman took place within the special maritime and territorial jurisdiction of
4 the United States.

5 2. The government has not proved beyond a reasonable doubt that Mr. Maker
6 intentionally spat in the face of Connie Sue Redman.

7 3. The government has not proved beyond a reasonable doubt that Mr. Maker otherwise
8 willfully attempted to inflict injury upon Ms. Redman.

9 4. The government has not proved beyond a reasonable doubt that Mr. Maker threatened
10 to inflict injury upon Ms. Redman and appeared to have the present ability to do so such that Ms.
11 Redman had a reasonable apprehension of immediate bodily harm.

12 **B. Conclusions of Law**

13 1. Mr. Maker is not guilty of simple assault as defined in 18 U.S.C. § 113(a)(5).

15 Dated: July 11, 2008

16 Respectfully submitted,

17 BARRY J. PORTMAN
18 Federal Public Defender

19 /s/

20 ERIC MATTHEW HAIRSTON
21 Assistant Federal Public Defender